COLUMBIA LAW REVIEW.

Vol. XVI. FEBRUARY, 1916. No. 2

THE ORIGIN OF ENGLISH EQUITY.

A good deal of light has been thrown by recent publications upon the early history of Equity and its relation to the Common Law courts in the twelfth and thirteenth centuries. The most important of these publications are the *Eyre of Kent,* 1313-1314, in four volumes, (especially valuable is the Introduction to Vol. II.), and *Select Bills in Eyre,* 1229-1333, both works edited by Mr. W. C. Bolland and published by the Selden Society between 1910 and 1914. The review of the latter book by Professor F. M. Powicke in the *English Historical Review,* Vol. XXX., pp. 330-336, is also a material contribution to the subject, and equally important is the paper on the *Early History of English Equity,* by Dr. H. D. Hazeltine, published in *Essays in Legal History read before the Congress of Historical Studies in 1913,* edited by Professor Vinogradoff. To these studies should be added Chapter IX. of Professor Baldwin's *The King's Council,* in which early Equity procedure in the Exchequer is discussed. Attention should also be called to an earlier study, to the discussion of certain writs, issued by William the Conqueror and later kings down to Glanvill's time, which give evidence of "the exercise of equity powers by the superior courts of the Norman period", in Bigelow's *Procedure,* pp. 192-196, (1880). This passage in all probability has never received the attention which it deserved because it has not been possible to see that these cases were anything more than rudimentary beginnings leading to no perceptible results, or to connect them in any way with the beginning of Equity proper.

The paper of Dr. Hazeltine referred to above adds a considerable number of instances of Equity procedure in the early Common Law courts to those cited by Mr. Bigelow and carries the period of such a Common Law jurisdiction well into the fourteenth cen-

tury.[1] It is, however, to Mr. Bolland's discovery of the bills in Eyre that we owe an understanding of the importance of this jurisdiction, and of the great extent to which it was employed in the Eyre courts at the end of the thirteenth century and the beginning of the fourteenth.[2] The bills in Eyre are in form and purport so nearly like the later Chancery bills that both Sir Frederick Pollock and Dr. Hazeltine are inclined to regard the Chancery bills as descended from them.[3] They are petitions praying remedy of grace and favor, "for God's sake and your own soul's sake"; "for your charity"; "for the love of Christ and the soul of the Queen".[4] They concern a great variety of matters, both outside and within the Common Law jurisdiction of that day, and make evident the extensive employment of this procedure.[5]

The evidence brought together in the writings referred to above has been considered by the authors with reference to the history of Equity only, not with reference to the history of Common Law. The two are, however, I venture to assert, inseparably bound together; more than this, it is clear, I think, that this union, or this identity rather, is the natural and logical fact in that early age, whether looked at from the side of procedure or from the side of the courts in which the procedure was employed. In other

[1] *Bracton's Note Book*, pl. 391, is interesting in this connection. A suit, opening with a petition against the king, was brought in the central court of Common Pleas by the bishop of Norwich, and though it did not go to judgment, no question arose of the competence of the court. We should expect such a suit by a person of episcopal rank to be brought, at that date (1230), before the Council, *i. e. coram rege*. See the petition against the king concerning the earldom of Huntingdon before the Council in 21 Henry III., *Placitorum Abbreviatio*, 105.

[2] See especially *Eyre of Kent*, II. pp. xxi-xxx, and *Bills in Eyre*, pp. xv-xix. Also described by Sir Frederick Pollock in *Essays in Legal History*, 290-292.

[3] See respectively *Essays in Legal History*, 291 and 262. Mr. Bolland says, *Eyre of Kent*, II. p. xxix, that he has "no doubt that these bills are the very beginning of the equitable jurisdiction". The statement is not repeated in *Bills in Eyre*.

[4] These are citations from actual bills. See *Eyre of Kent*, II. p. xxv.

[5] Mr. Bolland notices the wide range of cases covered by these bills, and says they "embody complaints of infractions of almost every kind of personal right." *Eyre of Kent*, II. p. xxiii; *Bills in Eyre*, p. xl. It is interesting to add that the Carolingian ancestors of the *præcipe* writ seem to have provided for an equally wide range of cases. See the following from the form book of Marculf (I. 29): "Ille rex, vir inlustris, illo. Fidelis noster ille ad presentiam nostram veniens nobis suggessit, quasi vos eum, nulla manenti causa, in via adsallisetis et graviter livorassetis et rauba sua in solidos tantos eidem tullesetis vel post vos reteneatis indebitae, et nulla justicia ex hoc aput vos consequer possit." *Mon. Germ. Hist., Formulæ*, ed. Zeumer, p. 60. No. 80, *Bills in Eyre*, 53, is a case of highway robbery with violence.

words, we have now reached a stage of this inquiry where we may confidently assert that Equity and Common Law originated in one and the same procedure, that during the first two hundred years of their history they were not distinguished from one another, and that if we now distinguish between them during that period, we do it artificially, by the application of tests impossible to contemporaries. The bearing of this fact upon constitutional, as well as upon legal, history should not be overlooked, for it makes clear upon one side, as has already been done upon others, the wholly undifferentiated character not merely of institutions, but of functions also, during the first age of our constitutional history. It is well on in the fourteenth century before we get any clear distinction between Equity and Common Law, and it is in that century also that we find contemporaries beginning clearly to differentiate in numerous cases between functions and between institutions, though the beginnings of more or less vague distinction and separation may be traced back into the thirteenth century.

The Common Law originated, as is well enough known, in new procedure and new judicial machinery brought into England at the Norman Conquest.[6] Its growth as a continuous development was due to the rapid expansion in character and extension in application which was given in England to old Frankish forms and institutions which had existed in a somnolent condition for many generations. In this new legal evolution, the following principle is fundamental from the very beginning: the new procedure and the new machinery are the king's private property; they are no part of the public machinery of the state to which any individual may appeal in his personal need as he might to the shire or hundred court. This principle applied just as truly to the case of the baron who was bound to the king by the tie of feudal vassalage, and consequently a member of the central curia regis, as of the common freeman, or of the knight who was a rear-vassal only; he could not use the new procedure as a matter of right, for this was no part of the procedure of the curia regis, and was never used by it during the first hundred and fifty years unless by a special commission of the king's.

This fundamental principle immediately revealed in two particulars the control which it exerted over the whole development. 1. If an individual wished the use of the king's procedure, he must

[6]Such portions of the older law and procedure as survived for any considerable time, did so in the end because they were taken up into, or originally formed a part of, this newer system.

first get the king's permission. 2. If he used the king's procedure, he must do it by means of the king's machinery. If a private person for example wished the use of a local jury in order to get the facts of his case before the court, he must get the king's permission, because the jury procedure was a private possession of the king's used for administrative cases or for cases in which the king was directly concerned;[7] and if he actually made use of it, he must do so in a king's local court before a royal commissioner specially appointed for that purpose, because the commissioner represented the king and stood in his place, *in meo loco,* as William I. told the bishop of Coutance in one of the most important and instructive cases of his reign.[8] In a sense which probably seemed more real to that age than it would to ours, the king in such a case was operating his own machinery.

If we look at the matter institutionally rather than from the side of the practical motive, the fundamental principle which has just been stated was the reason for the establishment of the itinerant justice system and all that it developed into. If the jury was to be used in the counties in the detection of crime, or in inquiry into the conduct of the sheriff, or in the trial of suits at law between private persons, it must be taken there and operated by a commissioner, or commissioners, who stood in the place of the king and held a local king's court.[9] It would not seem possible to the twelfth century to do it in any other way.

With the fundamental principle already stated, there was from the very beginning combined another which linked this purely

---

[7]This statement is not to be modified by the fact that cases were begun before the itinerant justices without a writ, or tried by the old procedure, or that in cases begun without a writ recourse was had to a jury. The new procedure and competence were added to the old, not substituted for it. The old procedure was the natural one for the curia regis in all its branches, and its use in an Itinerant Justice court would be entirely normal. Recourse to a jury in a case begun without a writ would not be beyond the competence of the justices as representing the king, and in the same way they would be competent to refuse an assize called for by a writ. See Round, *Calendar of Documents preserved in France,* 147, No. 438. And upon this same principle rests also the fact which Mr. Bolland notes that "not even the king's prerogative will avail a man before the Justices in Eyre." *Bills in Eyre,* p. xviii referring to a case in *Eyre of Kent,* I. 54.

[8]Bigelow, *Placita Anglo-Normannica,* 287; Adams, *The Local King's Court in the Reign of William I.,* 23 Yale Law Journal, 490 (April 1914).

[9]In an interesting case of 20 Edward I., specially cited by both Sir Frederick Pollock (*l. c.* 292) and Mr. Bolland (*Eyre of Kent,* II. p. xxiii), the petitioner addresses the justice: "Dear Sir, I cry mercy of you who are put in the place of our lord the King to do right to poor and to rich". The case is No. 11, p. 6, *Bills in Eyre.*

judicial growth with the broader constitutional development which was at the same time going on. This is the conception of the function of the king in the life of the community which had come down to the feudal age as an inheritance from the past. The king was not a mere feudal suzerain, not merely the lord paramount of the realm, though often he might seem to be nothing more than that. He owed a duty to the community at large to preserve order, to see that justice was done to rich and poor alike, which might at any moment override his feudal duty as the lord of vassals, and must override it, if the two came into irreconcilable collision.[10] The Anglo-Norman kings found this fundamental principle, generally recognized in their time, of invaluable assistance in their attempt, whether consciously or unconsciously made, to embody their practical absolutism in constitutional forms, but in so doing they laid down the road along which our Equity and Common Law came to us.

Common Law and Equity originated together as one undifferentiated system in the effort of the king to carry out his duty of furnishing security and justice to all in the community by making use of his prerogative power through his prerogative machinery. The identity of the two systems at the beginning, their origin in the same prerogative action, can be clearly seen in this: the essential characteristic of Equity procedure of a later date is that it begins with a petition asking the king to interfere to secure justice where it would not be secured by the ordinary and existing processes of law. But it was the essential characteristic of all Common Law actions in the eleventh and twelfth centuries that they began with a petition asking the king to interfere to secure justice where it would not be secured by the ordinary and existing processes of law. In some form, it does not matter in what because forms were not yet fixed, nor the following of a definite form regarded as a matter of importance, the man who wished to have the advantage of the king's prerogative procedure and the use of the king's machinery, that is, who desired

[10]As the statement to this effect made in the *Origin of the English Constitution*, 58 ff., has been questioned, I give here references from which the study of the subject may be begun by anyone who is not familiar with it. See for Anglo-Norman sources, Liebermann, *Leges Edwardi Confessoris*, 63, and article "Koenig", *Gesetze der Angelsachsen*, II. 548; Boehmer, *Kirche und Staat in England und in der Normandie*, 421-423; Poole, *Illustrations of Medieval Thought*, 233-238; Valin, *Le Duc de Normandie et sa Cour*, 188-193. For contemporary French ideas, see Luchaire, *Institutions Monarchique*, Bk. I., Chap. I., and Langlois in the *Revue Historique*, XLII., 78. The primary duty of the king to make justice prevail is frequently expressed in the charters.

a remedy not provided him by the ordinary judicial system, must ask for it and obtain permission to use it; and the permission must be granted in so demonstrable a way as to authorize or command the royal officials to act in the case. This authorization and command is the original writ in an action. Indeed in one sense, this has remained the fact in common law practice to the present day. The original writ in an action at Common Law must be sought and asked for however perfectly it may have become *de cursu*.[11]

Of the first actual case in which this new procedure was used of which we have any knowledge, the case of Archbishop Lanfranc against Odo the king's brother, in 1070, we are told in the historical account that Lanfranc, after learning of the losses which the archbishopric had suffered, petitioned the king as quickly as possible and with vigor concerning it and the king directed that a court should be formed to try the case.[12] It is characteristic of all these early instances, upon whichever side of the later division between Equity and Common Law they would fall, that the fact of a petition to the king is not directly stated in the writ which authorizes the action. The fact is, however, often stated in the accounts of trials given by the chroniclers;[13] nor should we overlook the phrase so common in varying forms in the earliest writs: *ne audiam inde clamorem amplius pro penuria recti et justiciæ*.[14] Indeed the fact of the petition is almost directly stated in the famous writ *præcipe*, the ancestor of many Common Law writs, when it commands A to restore to B a measure of land *unde idem B queriter quod predictus A ei deforciat*.

The examples of Equity cases in the Common Law courts which have been collected by Messrs. Bigelow and Hazeltine are of writs which would fall in the later classification upon the Equity side, and therefore they show, as these writers indicate, that no distinction of courts was then made for cases of this kind. But the converse of this is equally true that there was no difference of procedure in these cases, for it is evident that this Common Law

[11]This is not the case in those of the United States in which the old Common Law has been replaced by a code.

[12]"* * diligenter inquisita et bene cognita veritate, regem quam citius potuit et non pigre inde requisivit. Praecepit ergo rex comitatum totum absque mora considere * *". Bigelow, *Placita*, 6.

[13]See for example, *Chronicon Monasterii de Abingdon*, II. 29, (Bigelow, *Placita*, 64); Odericus Vitalis, (ed. Le Prevost) III. 407, (Bigelow, *l. c.* 67).

[14]*E. g.*, Bigelow, *l. c.* 91—a writ of Henry I's of about 1106, from *Chron. Abingdon*, II. 77. *Cf.* Davis, *Regesta Regum Anglo-Normannorum*, Appendix, No. xxix, a writ of William I's.

writ *præcipe,* if we regard it as of the time when the first book on the Common Law was written, fails in none of the tests later employed to distinguish Equity from Common Law. It issues upon the petition of the complainant, "in the teeth of"[15] the ordinary existing law under which the case would come, by the prerogative action of the king on the ground of general justice, and provides a remedy, the use of a court and its procedure, which the ordinary law could not furnish.[16] We must not overlook the fact that at the accession of Henry II the system of justice which grew into the Common Law was as much outside of, and in violation of, the ordinary system of justice which prevailed throughout the Anglo-Norman state, as ever Equity was at any later time in relation to the Common Law system. No Equity process of the fourteenth century was more clearly in the teeth of the ordinary law than was this *præcipe* writ in 1187.[17]

Let us look at the writ in detail: "Rex vicecomiti salutem. Precipe A. quod juste et sine dilatione reddat B. unam hidam terre in villa illa, unde idem B, queritur, quod predictus A. ei deforciat; et nisi fecerit, summone eum per bonos summonitores, quod sit ibi coram me vel Justiciis meis in crastino post octabis clausi pasche apud locum illum, ostensurus quare non fecerit."[18] Notice first the petition of the complainant implied in the words *unde idem B. queritur,* as referred to above. Second, *quod juste reddat B. unam hidam terre:* the justice of the plaintiff's case is assumed and on that ground the command is issued. Third, it is a direct command to the defendant to do justice, that is, it is a prerogative action of the king's based on his duty and right to secure justice for all. Fourth, if the defendant does not obey, he is under obligation to explain to the king why he has not done so, and this obligation it is which brings the case into the king's court and gives to the plaintiff the advantage of its procedure.[19] Had

[15]Bolland, *Eyre of Kent,* II. p. xxviii.

[16]The writ removed the action from the court of a baron where it would normally have been tried according to the old procedure by the ordinary feudal law.

[17]See Bigelow, *Procedure,* 76-79; Adams, *Origin Engl. Const.,* 96-105.

[18]Glanvill, Bk. I., c. 6.

[19]An interesting writ of William I's, not exactly of the *præcipe* type, states rather plainly the alternative: "Facite abbatem de Heli resaisire de istis terris quas isti tenant * * * si ipse abbas poterit ostendere supradictas terras esse de dominio suæ ecclesiæ et si supradicti homines non poterint ostendere ut eas terras habuissent de dono meo." Bigelow, *Placita,* 26. A writ of Henry I's reads: "Praecipio tibi ut sine mora facias habere ecclesiae Sanctae Mariae de Abbendonia terram quam * * si illa

this writ had its origin in the fourteenth century, when the Common Law and its courts formed the normal system from which the case must be evoked to the special justice of the king, then it would have been necessarily an Equity writ.[20] This is an impossible supposition, but that is exactly the situation with reference to this writ in Henry II's time and states accurately the relation in which it stood in the twelfth century to the older courts and procedure. It is a commonplace of knowledge that the opposition of the feudal courts to it was so strong, because of its violation of their rights, as recognized in the existing organization of justice in which it interfered, that its further use was forbidden by c. 34 of Magna Carta.

The same facts may be shown to be only a little less plainly true of the writ of right. Indeed the identity of Equity and Common Law in the twelfth century appears in every feature of the Common Law of that time, or of the system which developed later into the Common Law, so much so that, if we wished to assign to either a precedence in time, we must say not that Equity originated in Common Law, but that Common Law originated in Equity, in the desire to secure justice for all more surely than existing law would do it, to establish an equitable procedure and to furnish equitable remedies.[21]

When we go on into the thirteenth century, we pass into a time when the older system of law and courts was rapidly falling into insignificance before the advance of the newer system, and

---

terra est de dominio praedictae ecclesiae". *Ibid.*, 96. The Carolingian ancestor of the *præcipe* writ states the fact of petition more clearly than Glanvill, see note 5 *ante*, and the alternative to obedience in much the same way as the writs just quoted: "Certe si nolueretis, et aliquid contra hoc habueretis quod opponere, non aliter fiat, nisi vosmet ipsi per hunc indecolum commoneti Kalendas illas proximas ad nostram veniatis presentiam eidem ob hoc integrum et legalem dare responso." Zeumer, *u. s. Cf.* the mandate, No. 18, Zeumer, 120.

[20]The equitable character of the *præcipe* writ is seen even more clearly in the form used to enforce the payment of a debt, Glanvill, Bk. X. c. 2.

[21]There is no reference in Bracton to a technical Equity system. A passage in f. 12b comes nearest to such a reference, but here as elsewhere the word is used in its general, philosophical sense, and the passage and its context shows that Bracton understood that the equitable remedy which should be granted was to be granted in the Common Law court. This passage reads as follows in Dr. G. E. Woodbine's forthcoming edition of Bracton: "Et si idem C. primo feoffatus eundem B. firmarium eicere non possit incontinenti vel post intervallum, competit ei assisa novae disseisinae, tam super feoffatorem suum quam super firmarium, et quo casu cum per assisam recuperaverit versus ipsum B. firmarium, de aequitate et per officium iustitiarii tenebitur donator eidem firmario ad excambium propter fraudem." The passage on Equity on f. 23b is a marginal addition, probably not made by Bracton. See Woodbine's Bracton, I., 375.

when this latter, the Common Law system, was coming to be looked upon as the normal and prevailing law of the community. It is a time also when differentiation was slowly but steadily taking place in the judicial system. A new central court, the later Common Pleas court, had early been found to be a necessary adjunct of the itinerant justice system and it took from the middle of the reign of Henry II a distinct and fairly well defined position.[22] The reservation of difficult cases from this court, or from the Itinerant Justice courts, to the Council, or small curia regis, forced by degrees upon that body, as the Common Law became more and more technical in character, an increasing amount of technical, or professional, judicial work. This body of work was further increased by the tendency to regard some portion of what was original conciliar judicial work from the technical or professional point of view.[23] By slow degrees, scarcely perceptible in the thirteenth century,[24] this tendency created a distinct court, the *coram rege,* or King's Bench court.[25] Meantime the Exchequer, as another phase of the Council, or small curia, gradually becoming distinct both from Council and from *coram rege,* had continued its judicial function, its power to try cases as a court of original jurisdiction, and as in the thirteenth century the advantages of the Common Law procedure had become so evident as to make it now the prevailing system, the Exchequer showed a tendency to assume a Common Law jurisdiction or, to put it in terms which are appropriate to the thirteenth century, to adopt a Common Law procedure. The natural effect of these developments was to bring forward as never before, probably not into very clear consciousness

[22]Adams, *Origin of the English Constitution,* 136-141.

[23]That is, coming before the Council as a court of original jurisdiction.

[24]Because in this body, which was gradually becoming professional, there were so frequent reversions to primitive type, that is, to an administrative council, to a conciliar, non-professional body, which is only to say in other words that the differentiation was still incomplete.

[25]I hope to be able before very long to bring together a considerable number of facts which tend to show how the special court of King's Bench developed out of the situation created by the Itinerant Justice courts and the court of Common Pleas. The facts I believe explain some things in this evolution which have not been quite clear, and they are also to some extent confirmatory of the suggestion as to the origin of the court of Common Pleas tentatively advanced in note A to Chap. III in the *Origin of the English Constitution.* In this connection, Mr. Bolland has, I think, in one place slightly misinterpreted his evidence. In the passage cited in *Bills in Eyre,* p. xvii, "Our Justices at Westminster" and "Our Justices in Bank" both refer to the Bench, or central court of Common Pleas, and "by the order of Ourselves" is not *coram rege,* but the king's mandate.

but as a practical matter, the question of jurisdiction, of boundary lines and fields of action.[26]

As parallel to this tendency there must also be noticed another affecting the history of the writ. It is the increasing attitude of suspicion from before the middle of the century which the community at large adopted towards the growing number of writs and the power of Chancery to make new writs at will. Growing out of this are various attempts at the middle of the century and later to regulate and limit the issue of writs.[27] If we recall the principle which had been early established in the Common Law that the action as developed before the court must not be different from that foreshadowed in the writ,[28] and the consequent fact that the multiplication of writs which characterized the first century of the Common Law was a process of the multiplying and classifying of actions, it will be clear that a limitation upon the making of new writs was a marking out of the field of Common Law to a certain extent and a setting of boundaries to it.

The effect of both these tendencies to mark out for the courts the boundaries of their jurisdiction and also the boundaries of the law which they applied, was the same. The Common Law was becoming a hard and fast system with certain clearly defined things which it could do and with equally clearly defined things which it could not do. I do not intend to assert that this point in the development was reached at the end of the thirteenth century. It is very evident that it was not, though considerable approach had been made towards it. When the fourteenth century opened, boundary lines still seem now and then vague, fields overlap, content is still variable, the same body will do things that are later regarded as quite distinct, two different bodies will do the same thing, but as compared with the beginning of the thirteenth century great progress had been made towards definition and exclusion. It is possible to say I think that this progress had gone much further in the case of judicial institutions than it had in those which afterwards formed, or were then forming, the legis-

[26]This fact is indicated in various ways: by the first steps in the development of a procedure in error; by instances of pleading to jurisdiction, as in *Bracton's Note Book*, pl. 1213 and 1220 (Madox, *Exchequer*, I. 102, n. *f.*, and *Plac. Abbr.* 105); and by the possibility of such a statement of the difference between the courts as that in Bracton f. 108.

[27]Matthew Paris (Rolls Series), IV. 363, 367; *Annales Monastici, Burton*, (Rolls Series), 448; Holdsworth, *History of English Law*, I. 196, II. 291 and references; Bigelow, *Procedure*, 14, 197.

[28]Glanvill, Bk. XII., c. 24; *Select Civil Pleas* (Selden Society), Nos. 16, 23, 31, 76, 91.

lative, administrative, and conciliar systems, the Council and Parliament.

It is in this situation, as carried on into the fourteenth century, that we must find the origin of Equity as a separate system and by which we must account for its late origin as compared with the Common Law. So long as the Common Law remained a flexible system, its field undefined, its power of inclusion unlimited, its organs undifferentiated, there was no reason for distinguishing between it and Equity, and all that was later done by Equity could still be done in the field of the Common Law. Such a distinction between them was indeed impossible. All acts of the king in opening his prerogative procedure to the community were alike in the teeth of the existing system, furnishing unusual remedies, and founded upon his duty to secure justice to all. There was no ground upon which they could be divided into two great classes by the later tests which distinguished Equity and the Common Law. It is only as the Common Law became a hard and fast system, as men began to ask themselves about boundaries of action and limitations upon the new, that a new field must be found for the action of the royal prerogative in securing general justice not specially provided for in the ordinary way, for this duty and this function still remained to the king.

The seat of this action was found in a place where it had always existed, in an organ which had come to be more and more recognized, as definition and differentiation increased, as being the special organ of the king's prerogative, in the Council. In the early years of the fourteenth century, we find the Itinerant Justice court exercising a true Equity jurisdiction and acting upon petitions for grace and mercy upon a rather extensive scale. This was manifestly a survival maintaining itself no doubt because in a peculiar degree as royal commissioners the justices stood in the place of the king, but destined soon to disappear.[29] At the same time we find similar petitions acted upon by the Council in Parliament.[30] In the spirit of the differentiation which was then under way, this was the normal and natural place for them. This was the organ in which still resided all those general and undefined functions and powers of the crown which had not been diminished

[29]And possibly because this jurisdiction in the Itinerant Justice courts served still a very useful purpose for the poorer people who would find it a more formidable matter to petition the Council which might in any case not trouble itself with their small concerns.

[30]See Maitland, *Memoranda de Parliamento* (Rolls Series), Introduction.

or changed, even when a given function had obtained special organic expression. The relation of the king to the law had not as yet been modified by the development of the Common Law or of the Common Law courts, as his relation to legislation was not to be for a long time modified by the development of a special legislative organ.

As the organ of the king's prerogative, the Council was the natural organ for the exercise of his equitable powers in interference in the field of the Common Law, and it is therefore under the Council that the modern system of Equity developed. The ancestor of the bill in Equity is to be found, not in the bills in Eyre, but in the petitions to the Council. It may be of interest to add that when the later bill in Chancery begins to assume formal character, the same process of differentiation and limitation was beginning in Equity which had earlier occurred in the Common Law.

GEORGE BURTON ADAMS.

YALE UNIVERSITY.